

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IDRIS TURNER,

Petitioner,

v.

JEFFREY UTTECHT,

Respondent.

Case No. C14-470 RAJ-BAT

**REPORT AND
RECOMMENDATION**

Petitioner Idris Turner seeks 28 U.S.C. § 2254 habeas relief from his conviction by jury of first degree assault of a child. Mr. Turner presents three grounds for relief in his petition, but they are essentially one claim -- that the trial court should have suppressed his confession because it was coerced after he waived his *Miranda* rights.

The Court recommends **DENYING** the claims as Mr. Turner has failed to demonstrate that the state-court adjudication of his claims was contrary to, or an unreasonable application of, established federal law, or was an unreasonable determination of the facts in light of the evidence presented. *See* 28 U.S.C. § 2254(d)(1)–(2). The Court also recommends **DENYING** the issuance of a certificate of appealability.

BACKGROUND

A. Statement of Facts

The Washington Court of Appeals summarized the facts as follows:

1 P.T. was born on April 11, 2006. Her mother, Trina Washington-Eastland
2 (Washington) was 18 years old at the time and living with her foster parent, Afua
3 Ndiaye. Since she was an infant, P.T. had constipation problems and when she
was about 16 months old, Washington began spanking her to encourage her to
move her bowels.

4 In July 2007, Washington began dating Idris Turner. Turner moved in
with her and in February 2008, Washington was pregnant with Turner's child.
5 Washington's pregnancy was high risk and she was often confined to bed. As a
6 result, Washington temporarily relinquished full care and custody of P.T. to
Ndiaye, who cared for P.T. primarily during the week between April and
September 2008.

7 On July 10, 2008, while Ndiaye was out of town, Turner and P.T. were
8 visiting Washington at the hospital. A nurse saw Turner take P.T. over his lap
and strike her forcefully on her lower back and backside while P.T. cried loudly.
9 The nurse reported the incident to Child Protective Services (CPS). When Ndiaye
returned a few days later and resumed custody of P.T., she noticed bruises on
10 P.T.'s buttocks, hip, and lower back, which were not present before she left town.
A CPS investigator spoke with Ndiaye and Washington, and Ndiaye reported the
11 bruises. The investigator examined P.T., photographed the bruises, and opened a
file, but did not take any action at that time.

12 Later that summer, unbeknownst to Washington, Turner began dating
13 Courtney Douglas and within a week, he moved into Douglas' apartment in
downtown Seattle. A week later, Turner introduced Douglas to his "best friend,"
14 Joy Brannon. Brannon then moved into Douglas' apartment along with Turner.
Turner also introduced Douglas to P.T., his "step-daughter," and explained that
15 P.T.'s mother was pregnant and unable to care for P.T.

16 Turner and Brannon lived with Douglas in her apartment for about three
weeks, until Douglas was evicted. The three then moved to a condominium in
17 Renton. During this time, P.T. often stayed there with Turner. Washington was
confined to bed rest at this time due to the late stage of her pregnancy and
18 Turner had primary responsibility for P care from approximately mid-September
to mid-October 2008 and again in November 2008.

19 During this time, Turner became frustrated with P.T.'s constipation
20 problem and lectured her daily about "pooping." He grabbed her face if she did
not seem attentive, leaving bruises on P.T.'s jaw line. Turner then began
21 whipping P.T. with a leather belt when she would not have a bowel movement.
He would also put P.T. in the bathtub and spray water in her face with a shower
22 nozzle.

23 On one occasion, after lecturing P.T., Turner took her into the bathroom.
Douglas then heard two loud "smacks" and stood outside the bathroom door,

1 listening to Turner speaking firmly to P.T. When Douglas opened the door, she
2 saw P.T. on the floor, in a fetal position, not making a sound. Turner had a belt
3 high above his head, ready to strike P.T. again. When Douglas asked him what he
4 was doing, he attacked Douglas and struck her repeatedly with the belt. He then
5 returned to P.T. and whipped her, beating her entire body. Douglas was too
6 scared of Turner to call the police.

7
8 Shortly after this incident, Brannon and Turner had a dispute in which
9 Brannon struck Turner with a metal compact disk rack and attempted to stab him.
10 Turner had P.T. with him at the time, but fled, leaving P.T. with Douglas.
11 Douglas took P.T. to the West Seattle apartment of her friend Myel Jewell and
12 Turner, Douglas, and P.T. ended up staying with Jewell from about November 21,
13 2008 through November 29, 2008.¹

14
15 On the day before Thanksgiving, Jewell and Douglas heard Turner yelling
16 and P.T. crying inside the bathroom. When Douglas opened the door, Turner
17 screamed at her. She saw P.T. in the bathtub, naked, as Turner held the
18 showerhead and sprayed water in her face. P.T. gasped for air and appeared to
19 Douglas as though she could not breathe. Later, Douglas noticed that P.T.'s
20 mouth was "messed up," and Turner told her she fell in the tub.

21
22 The next day, on Thanksgiving, P.T. had a big scarf tied around her head
23 in a bow that covered her cheeks, ears, and part of her head. Turner forced her to
stand while she ate to teach her that "people won't do things for her." Later that
night, Jewell awoke to the sound of P.T. crying and gurgling coming from the
bathroom. She also heard what sounded like a body part bumping against the tub.
Turner came out of the bathroom and explained that P.T. had fallen but was okay.
P.T. whimpered.

15
16 The following day Jewell agreed to watch P.T. so Turner could visit
17 Washington and the new baby. P.T. had been asleep in Turner's arms and was
18 bundled up in a jacket and hat that covered part of her face. When Turner left,
19 Jewell laid P.T. down and let her sleep. Several hours later, Jewell became
20 concerned because P.T. had slept all day and she had trouble waking her. She
21 then removed the hat and hood and saw bruises on P.T.'s face and a knot on her
22 forehead.

23
24 When Douglas returned home from work, Jewell told her that something
25 was wrong with P.T. Turner then arrived home and Jewell told him to take her to
26 the hospital. Turner became very angry and insisted that P.T. was playing a
27 game. He tried to stand her up next to him and when she reached for his leg to
28 brace herself from falling, he moved his leg and let her fall. Turner then whipped
29 her on her leg because he thought she was disobeying him. He continued to
30 demand that she stand, but she kept falling down.

1 Turner then held P.T. in his arms and insisted that she was fine and was
2 just asleep. P.T. then began having seizures and Douglas and Jewell began to rub
3 ice on her to stop the seizures. They then removed P.T.'s clothing and saw that
4 she was bruised all over her body, hair was missing from both sides of her head,
5 and that there were cuts on her stomach from the belt whippings and finger marks
6 on her arms.

7 Turner then said he could not believe he had done this to his baby and told
8 Douglas and Jewell that the injuries were from him whipping and grabbing P.T.
9 He then told P.T. to fight and be strong and said, "[O]h, my baby, I did this to
10 you. I am so sorry. . . . I don't want to go to jail, I don't want to go to prison." He
11 threatened to kill himself and everyone else. P.T. continued to have seizures, but
12 no longer woke up or moaned. Jewell and Douglas repeatedly told Turner they
13 needed to take P.T. to the hospital, but he refused.

14 The next morning Turner took P.T. to see Washington, who was still on
15 bed rest. Turner said that P.T. was fine, but according to Jewell, P.T. was still
16 unconscious when they left. When Washington saw P.T., she immediately knew
17 that P.T. needed to be hospitalized and they took her to the emergency room.

18 At the emergency room, P.T. was unresponsive, was breathing
19 abnormally, and had retinal hemorrhaging. Her CT (computed tomography) scan
20 was abnormal, indicating possible traumatic brain injury. Her body was bruised
21 all over and several areas were swollen, including her buttocks. She also had
22 puncture like wounds to one leg. She was intubated and transferred to
23 Harborview Medical Center in critical condition.

At Harborview, she was treated by Dr. Kenneth Feldman, an expert in
pediatric child abuse. Feldman noted that P.T. had areas of skin that had been
torn off, muscle damage, traumatic injuries to her scalp where she had hair loss, a
burn mark on one hand, a torn retina in one eye, bleeding in both eyes, fresh
blood in the normal fluid space around her brain and old fluid around her brain,
which was indicative of previous brain trauma. According to Feldman, these
injuries were likely the result of non-accidental trauma. Additionally, she was left
blind in one eye and had impaired vision in the other. According to Dr. Jason
Cheung, a pediatric ophthalmologist, it would take a severe force, not a seizure, to
separate the layers of P.T.'s retina.

Turner was eventually arrested and interviewed by police detectives. He
admitted to whipping P.T. with a belt during toilet training sessions. He also told
police that on that Wednesday, he had hit P.T. with a belt while she was on the
toilet and she fell off on to the floor. He said that she defecated while she was on
the floor and then he put her in the bathtub. He also said that she had hit her head
while he was whipping her and he noticed a knot or bump on her forehead, but
that it was an accident.

1 The State charged Turner with first degree assault of a child. At trial,
 2 Turner presented expert testimony from Dr. Lily Jung, a neurologist who
 3 reviewed P.T.'s medical history and noted that P.T. suffered a previous seizure in
 4 June 2006 and had a brain defect that predisposed her to have seizures.
 5 According to Jung, P.T. had a hole in her corpus collosom, a structure in her brain
 6 that sends signals from one hemisphere of the brain to the other. Jung further
 7 noted that P.T. was born with a sickle cell trait that predisposed her to clotting of
 8 the veins and testified that based on the CT scan done when she was brought to
 9 the hospital on November 29, 2008, P.T. had such a clot that was deep within her
 10 brain in a place where a clot was not likely to be a result of trauma. According to
 11 Jung, the trauma from increased brain pressure, which had been caused by the
 12 blood clot, damaged P.T.'s optic nerve and caused her to lose her sight.

13 The jury found Turner guilty as charged. The trial court imposed a
 14 standard range sentence of 147 months, with 24 to 36 months' community
 15 custody. Turner appeals.

16 ¹ [State court's footnote] The baby was born on November 20, 2008.

17 Dkt. 16, Exhibit 6, Unpublished Opinion, pp. 1-7; *State v. Turner*, 164 Wash. App. 1031 (2011).

18 **B. State Procedural History**

19 Mr. Turner appealed his conviction through counsel to the Washington Court of Appeals.
 20 Dkt. 16, Exhibit 4. The court denied his appeal in an unpublished opinion. *Id.*, Exhibit 6. Mr.
 21 Turner did not petition for review in the state's highest court. The Washington Court of Appeals
 22 issued its mandate on December 9, 2011. *Id.*, Exhibit 7.

23 Mr. Turner then filed a pro se personal restraint petition in the Washington Court of
 Appeals. *Id.*, Exhibit 8. The court dismissed the petition. *Id.*, Exhibit 11. Mr. Turner moved for
 discretionary review in the Washington Supreme Court. *Id.*, Exhibit 12. The court denied
 review in a ruling by the commissioner. *Id.*, Exhibit 3. Mr. Turner moved to modify the ruling.
Id., Exhibit 13. The court denied the motion without comment on February 5, 2014. *Id.*, Exhibit
 14. The Washington Court of Appeals issued a certificate of finality on February 21, 2014. *Id.*,
 Exhibit 15.

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EVIDENTIARY HEARING

The decision to hold a hearing is committed to the Court's discretion. *Schriro v. Landrigan*, 550 U.S. 465, 473 (2007). "[A] federal court must consider whether such a hearing could enable an applicant to prove the petition's factual allegations, which, if true, would entitle the applicant to federal habeas relief." *Landrigan*, 550 U.S. at 474. In determining whether relief is available under 28 U.S.C. § 2254(d)(1), the Court's review is limited to the record before the state court. *Cullen v. Pinholster*, ---U.S.---, 131 S.Ct. 1388 (2011). A hearing is not required if the allegations would not entitle petitioner to relief under 28 U.S.C. § 2254(d). *Landrigan*, 550 U.S. at 474. "It follows that if the record refutes the applicant's factual allegations or otherwise precludes habeas relief, a district court is not required to hold an evidentiary hearing." *Id.*; see also *Cullen*, 131 S. Ct. 1388 (2011). The Court finds it unnecessary to hold an evidentiary hearing because Mr. Turner's claims may be resolved on the existing state court record.

DISCUSSION

Mr. Turner raised three separate grounds for relief in his petition, all based on his contention that the trial court should have suppressed as coerced, statements he made after he waived his *Miranda* rights. He contends that the statements were coerced because the interviewing detective threatened him with a charge of attempted murder and told him he would not be able to see Washington or his children anymore.

The Fifth Amendment guarantees that "[n]o person ... shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. This privilege applies in the context of custodial interrogations, *Miranda v. Arizona*, 384 U.S. 436, 478 (1966), and is binding on the states, *Malloy v. Hogan*, 378 U.S. 1, 6 (1964). In *Miranda*, the Supreme Court identified

1 certain procedural safeguards which must precede an in-custody interrogation. The police must
2 advise a person taken into custody, or deprived of freedom in any significant way, of his right to
3 remain silent and his right to the presence of an attorney during questioning. *Id.* at 444. An
4 individual may waive these rights if the waiver is made voluntarily, knowingly, and intelligently.
5 *Id.*

6 A waiver is voluntary if “it was the product of a free and deliberate choice rather than
7 intimidation, coercion, or deception[,]” and is knowing and intelligent if it was “made with a full
8 awareness of both the nature of the right being abandoned and the consequences of the decision
9 to abandon it.” *Moran v. Burbine*, 475 U.S. 412, 421 (1986). A waiver may be express or
10 implied, and its existence is determined based on the particular facts and circumstances in the
11 case. *North Carolina v. Butler*, 441 U.S. 369, 373–75 (1979). “Only if the totality of the
12 circumstances surrounding the interrogation reveal both an uncoerced choice and the requisite
13 level of comprehension may a court properly conclude that the *Miranda* rights have been
14 waived.” *Moran*, 475 U.S. at 421 (internal quotation and citations omitted).

15 Likewise, the statement a suspect makes after he waives his *Miranda* rights must be
16 voluntary to be admissible. A voluntary statement is one that is the product of a rational intellect
17 and free will. *Blackburn v. Alabama*, 361 U.S. 199, 208 (1960). No one factor is determinative.
18 Instead, the “totality of the circumstances” must be considered. *Crane v. Kentucky*, 476 U.S. 683
19 (1986). This includes both the characteristics of the accused and the details of the interrogation.
20 *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973).

21 A state court’s subsidiary factual determinations underlying the issue of voluntariness are
22 entitled to a presumption of correctness and its conclusions entitled to great weight. *Miller v.*
23

1 *Fenton*, 474 U.S. 104, 112 (1985). However, the ultimate issue of voluntariness raises a legal
2 question requiring independent federal determination. *Id.*

3 In this case, the trial court held a CrR 3.5 hearing on the admissibility of statements, both
4 oral and written, made by Mr. Turner during the December 1, 2008 custodial interrogation. The
5 trial judge found that after the officer arrested Mr. Turner at Sea-Tac airport on December 1,
6 2008, he advised Mr. Turner of his right to remain silent and his right to an attorney. Dkt. 16,
7 Exhibit 9, at Appendix E (Finding of Fact 11). That same day, a Renton police officer took
8 custody of Mr. Turner and advised Mr. Turner of his *Miranda* rights. Mr. Turner acknowledged
9 that he understood his rights. The officer did not ask Mr. Turner any questions before he booked
10 Mr. Turner into the Renton city jail. *Id.*, Exhibit 9, Appendix E (Finding of Fact 12).

11 Later that same day, Renton police detectives Montemayor and Barfield brought Mr.
12 Turner to an interview room in the Renton Police Department. Detective Montemayor advised
13 Mr. Turner again of his *Miranda* rights. *Id.*, Exhibit 16, Verbatim Report of Proceedings,
14 February 9, 2010, pp. 30-31, 90-91. Mr. Turner again acknowledged and waived his rights. *Id.*
15 The two-hour interview was recorded. *Id.*, Exhibit 9, Appendix E (Finding of Fact 13).

16 A few hours later that same day, Detective Barfield spoke to Mr. Turner in an interview
17 room at the jail. *Id.*, Exhibit 16, at 93. Detective Barfield advised Mr. Turner of his *Miranda*
18 rights again. *Id.* at 94. Mr. Turner acknowledged in writing that he understood and waived his
19 rights. Mr. Turner then provided a written statement. *Id.*, Exhibit 9, Appendix E (Finding of
20 Fact 14).

21 Mr. Turner testified at the CrR 3.5 hearing that he provided the recorded and written
22 statements because Detective Barfield threatened to charge him with attempted murder and said
23 he would not let him see Washington or his children anymore. *Id.*, Exhibit 17, Verbatim Report

1 of Proceedings, February 10, 2010, pp. 81-82. Detective Barfield testified that he had not
2 threatened Mr. Turner. *Id.*, Exhibit 16, at 130. Both detectives testified that no threats or
3 promises were made to Mr. Turner during the prior interviews. *Id.*, Exhibit 16, pp. 33, 92. The
4 trial court found Mr. Turner's testimony regarding Detective Barfield's alleged threats "not
5 credible." *Id.*, Exhibit 9, Appendix E (Finding of Fact 15).

6 Mr. Turner further testified that Detective Barfield had not advised him of his *Miranda*
7 rights before the written statement and that he signed the written waiver of rights form only when
8 Detective Barfield ordered him to after the interview. *Id.*, Exhibit 17, pp. 82-84. This was
9 contrary to Detective Barfield's description of the event. *Id.*, Exhibit 16, pp. 93-94. The trial
10 court found Mr. Turner's testimony regarding Detective Barfield's alleged failure to read his
11 *Miranda* rights "not credible." *Id.*, Exhibit 9, Appendix E (Finding of Fact 15).

12 On appeal, the state court rejected Mr. Turner's claim that the trial court should have
13 suppressed his statements:

14 Mr. Turner next contends that the trial court should have suppressed as
15 coerced statements he made after he waived his *Miranda* rights. Mr. Turner
16 claims specifically that the interviewing detective threatened him. He made the
17 same claim at the CrR 3.5 hearing before trial. The trial court listened to his
18 testimony and that of the detective, and it did not find Mr. Turner credible. Mr.
19 Turner fails to show that the trial court's findings were unsupported by substantial
20 evidence or that the court's conclusions are unsupported by the findings. *State v.*
21 *Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994).

22 Dkt. 16, Exhibit 3, pp. 3-4.

23 The state court's fact-finding on this issue is presumed correct. While Mr. Turner insists
on the viability of his own interpretation of the evidence, he fails to demonstrate that the state
court's determination as to the credibility of the witness testimony or the ultimate decision was
in any respect unreasonable. Therefore, his claims should be denied.

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CERTIFICATE OF APPEALABILITY

If the district court adopts the Report and Recommendation, it must determine whether a certificate of appealability (“COA”) should issue. Rule 11(a), Rules Governing Section 2254 Cases in the United States District Courts (“The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.”). A COA may be issued only where a petitioner has made “a substantial showing of the denial of a constitutional right.” *See* 28 U.S.C. § 2253(c)(3). A petitioner satisfies this standard “by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Turner-El v. Cockrell*, 537 U.S. 322, 327 (2003).

The Court recommends that Mr. Turner not be issued a COA. No jurist of reason could disagree with this Court’s evaluation of his habeas claims or would conclude that the issues presented deserve encouragement to proceed further. Mr. Turner should address whether a COA should issue in his written objections, if any, to this Report and Recommendation.

CONCLUSION

The Court recommends **DENYING** Mr. Turner’s habeas petition on the merits without an evidentiary hearing, and **DENYING** the issuance of a certificate of appealability.

Any objections to this Recommendation must be filed and served upon all parties no later than Monday, **August 25, 2014**. The Clerk should note the matter for Wednesday, **August 27, 2014**, as ready for the District Judge’s consideration if no objection is filed. If objections are filed, any response is due within 14 days after being served with the objections. A party filing an objection must note the matter for the Court’s consideration 14 days from the date the objection is filed and served. The matter will then be ready for the Court’s consideration on the date the

1 response is due. Objections and responses shall not exceed twelve (12) pages. The failure to
2 timely object may affect the right to appeal.

3 DATED this 4th day of August, 2014.

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6 BRIAN A. TSUCHIDA
7 United States Magistrate Judge
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